

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

AMERICAN FEDERATION OF STATE, COUNTY,)		
AND MUNICIPAL EMPLOYEES, MISSOURI)		
STATE COUNCIL 72,)		
)	
Petitioner,)		
)	
vs.)		Public Case No. 83-002
)	
DEPARTMENT OF CORRECTIONS AND)		
HUMAN RESOURCES,)		
)	
Respondent.)		

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation pursuant to the filing of a Petition for Certification Election by the American Federation of State, County and Municipal Employees, Council 72, as public employee representative of certain employees of the Department of Corrections and Human Resources. A hearing was held on March 1, 1984 in Jefferson City, Missouri, at which Petitioner and Respondent were represented by legal counsel. This case was heard by the State Board of Mediation Chairman Mary Gant, Employer Member Norman G. Litz, and Employee Member Jim O'Mara. The State Board of Mediation is authorized to hear and decide issues regarding appropriate bargaining units pursuant to Section 105.525 RSMo, 1978.

The Board, after a careful review of the evidence presented at the hearing, sets forth the following findings of fact, conclusions of law and decision:

FINDINGS OF FACT

There are approximately two-thousand five hundred (2,500) employees in the Department of Corrections and Human Resources. Within the Department there are three Divisions. The Division of Administration has approximately seventy (70) employees. Its primary function is fiscal management, property control, construction,

physical plant maintenance, personnel budgets, purchasing, accounting, bookkeeping and inmate accounts. The Division of Adult Institutions has one-thousand nine-hundred (1,900) employees spread throughout twelve (12) institutions. It is primarily concerned with the health care, education, feeding, recreation, religious training, classification, guarding of prisoners and the maintenance of correctional facilities. The third Division is the Board of Probation and Parole. This Board has approximately six-hundred (600) employees throughout thirty-six (36) district offices and on the premises of the correctional facilities. Its primary functions are to oversee offenders' probation and parole and to supervise alternative programs to incarceration.

On January 31, 1983, in Public Case No. 82-016, Petitioner was certified to represent certain employees in the Department of Corrections and Human Resources. The bargaining unit in Public Case No. 82-016 was arrived at by a stipulation between the parties and subsequently agreed to by the Board. No evidence was produced concerning the appropriateness of the bargaining unit or the exclusion of certain employees designated as supervisory, managerial or confidential.

On February 22, 1983 Petitioner filed the instant petition, seeking to represent a category of certain employees previously excluded from the bargaining unit certified in Public Case No. 82-016. Petitioner proposed that a new bargaining unit be created to include these employees. The Respondent opposed the creation of a new bargaining unit for the employees listed in Petitioner's Petition and, in a pre-hearing Answer And Motion for Clarification of Bargaining Unit, urged the Board to add any employees determined as appropriate to the bargaining unit which had been previously certified in Public Case No. 82-016. Petitioner did not oppose the Respondent's request for accretion to the previously certified bargaining unit (Tr. 17).

Prior to the hearing in this matter, the parties entered into negotiations and resolved many of their disputes. As a result of these negotiations, the parties agreed that the following job classifications share a community of interest with other employees

in the Department of Corrections and Human Resources and should be excluded in the bargaining unit previously certified by the Board in Public Case No. 82-016:

Recreation Officer II
Maintenance Man II
Laundry Supervisor
Fire and Safety Supervisor
Stationary Engineer
(except on each at Algoa Correctional and Central Missouri
Correctional Center)
Meat Processing Supervisor (Corrections)
Laborer II
Outdoor Rehabilitation Counselor I
Corrections Caseworker I
Corrections Caseworker II
(Except those at Missouri Eastern Correctional Center, State Correctional
Pre-Release Center, Kansas City Honor Center, State Mary's Honor Center and
Chillicothe Correctional Center)
Institutional Community Activity Coordinator
Laundry Manager I

During the hearing, Petitioner and Respondent further agreed it would be appropriate to include the following job classifications in the previously certified bargaining unit (see Respondent's Exhibit 9):

Accountant I	Industries Trainee
Baker II	Librarian
Bookkeeping Machine Operator	Library Assistant
Building Engineer, Corrections	Machine Shop Foreman
Chemist I	Meat Cutter II
Chemist II	Medical Records Tech. I
Clinical Psychologist I	Medical Technologist II
Clinical Psychologist II	Medical Technologist III
Cook I	Planner I
Correctional Industries Analyst	Plumber
Correctional Industries Representative	Procurement Officer I
Dental Assistant	Production Specialist I
Drug Abuse Counselor III	Production Specialist II
Education Assistant II	Programmer I
Garage Supervisor	Psychological Technician
Graduate Nurse II	Refrigeration Mechanic II
Guidance Counselor, General	School Librarian
Industries Job Coordinator	Sewing Equipment Mechanic
Industries Supervisor I and II	Stores Clerk

Subsequent to the hearing, Petitioner and Respondent stipulated that the following six job classifications should also be added to those listed above:

- Assistant Director of Industries
- Barber II
- Central Transfer Authorities Manager
- Farm Supervisor
- Graduate Nurse III
- Industries Services Manager I
- Systems Analyst III

The parties agreed that all the above job classifications share a community of interest with the employees in the bargaining unit previously certified in Public Case No. 82-016, as required by Section 105.500(1), based on the amount of contact and interchange among the employees concerned, similarities in pay, fringe benefits, type of work and common supervision within the Department of Corrections and Human Resources (See Petitioner's Exhibit 6). The job specifications for each of these positions was admitted into evidence as Respondent's Exhibit 12 and Petitioner's Exhibit 2. The parties also stipulated at the hearing to exclude the following classifications of employees from the bargaining unit on the basis of supervisory, managerial, professional or confidential status (Petitioner's Exhibit 6):

- Corrections Officer III
- Corrections Supervisor I
- Cook III
- Recreation Officer III
- Corrections Industries Supervisor I
- Corrections Industries Supervisor II
- Factory Manager I
- Factory Manager II
- Plant Maintenance Engineer I
- Plant Maintenance Engineer II
- Stationary Engineer (at Algoa Correctional Center and
Central Missouri Corrections Center)
- General Farmer III (Farm Manager I)
- Functional Unit Manager
- Executive I
- Executive II
- Food Service Manager
- Outdoor Rehabilitation Counselor II

Training Officer
Corrections Caseworker II (at Missouri Eastern Correctional Center, State
Correctional Pre-Release Center, Kansas City Honor Center, St. Mary's Honor
Center and Chillicothe Correctional Center)
Maintenance Supervisor II
Records Officer I
Records Officer II
Laundry Manager II (Industry Services Manager II)

Evidence was produced at the hearing on the following issues which had not
been resolved by the parties:

- 1) Whether Correctional Officer II's* should be included or excluded from any
appropriate bargaining unit on the basis that their jobs are supervisory in nature.
- 2) Whether teachers at correctional institutions are excluded from collective
bargaining pursuant to Section 105.510 RSMo, 1978.

*Excluding those employed at Respondent's Boonville, Pacific, Moberly, Algoa and
Missouri State Penitentiary facilities which Respondent stipulated were non-supervisory
(Tr. 79).

CORRECTIONS OFFICER

The evidence as to the duties of Corrections Officer II's (sometimes hereinafter
referred to as "C.O. II's") showed:

1. C.O. II's, second to lowest in rank in the guard force, are compensated at a
rate of \$12,048--\$16,524 annually and receive time and a half pay for overtime
work (See Petitioner's Exhibit 12).
2. C.O. II's spend the majority of their of their time supervising inmates, not
employee (Tr. 71).
3. C.O. II's have no authority to direct their own work and receive their work
assignments each day from C.O. III's or captains (Tr. 62,86).
4. C.O. II's prepare service reports on C.O. I's which are used in connection with
merit increase, discipline, changes of assignment, changes of agencies,
probation and termination service ratings, however, C.O. II's have no authority to
hire, fire, discipline or promote other employees (Tr. 130; Respondent's Exhibit
6, Tr. 57, 79, 86).

5. Considerable differences in authority exist between C.O. II's at larger and smaller institutions, and at some institutions a C.O. II may be temporarily assigned to act in a higher level supervisory capacity as an "Acting C.O. III" (Tr. 65, 112-114).

TEACHERS

Teachers within the Department of Corrections and Human Resources are employed to help residents learn basic interpersonal, communication, reading, and math skills. The teachers' goal is to educate inmates in "survival skills" (Tr. 133). Teachers are sometimes assigned to non-teaching duties which include inspecting facilities, sitting on classification boards to decide which prisoners should be released from the "Special Management Unit", writing conduct violations, sitting in on disciplinary hearings, searching for escapees, and escorting prisoners from one facility to another (Tr. 150, 156-157).

Correctional institution teachers' terms of employment differ from public school teachers in that correctional teachers work year-round and do not have a summer vacation (Tr. 136). Correctional institution teachers are similar to public school teachers in that they are required to pay into their own retirement system and must be certified by the State Department of Education (Tr. 136). Correctional institution teachers are supervised by an Education Supervisor and governed by the merit system rules as to work conditions, work rules, sick leave, and vacation policy. (Tr. 136, 139).

CONCLUSIONS OF LAW I.

APPROPRIATENESS OF THE BARGAINING UNIT

Section 105.525 RSMo, 1978 provides: "Issues as to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation . . ."

Section 105.500(1) RSMo, 1978 provides: "Appropriate Unit" means a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned";

The petitioner and respondent in this case have stipulated to the creation of a department-wide bargaining unit, excluding those employees previously certified as a unit in Public Case No. 81-028, as well as managerial, supervisory, confidential and professional employees.

This unit is to constitute an accretion to the bargaining unit previously certified by the Board in Public Case No. 82-016.

In deciding whether any bargaining unit shows a sufficient community of interest pursuant under Section 105.500 (1) the Board considers the following factors:

- 1) Similarity in the scale and manner of determining earnings.
- 2) Similarity in employment benefits, hours of work and other terms and conditions of employment.
- 3) Similarity in the kind of work performed.
- 4) Similarity in the qualifications, skills and training of the employees.
- 5) Frequency of contact or interchange among the employees.
- 6) Geographic proximity.
- 7) Continuity or integration of production processes.
- 8) Common supervision and determination of labor-relations policy.
- 9) Relationship to the administrative organization of the employer.
- 10) History of collective bargaining.

11) Extent of union organization.

See: R. Gorman, Basic Text On Labor Law, Unionization, and Collective Bargaining (West Publishing Company, 1976); Service Employees International Union, Local 96, AFL-CIO, v. City of Blue Springs, Public Case No. 79-031 (SBM 1979).

The Board recognizes that the bargaining unit proposed by the parties here includes many job classifications which have little in common insofar as the kind of work performed, job duties, skills or geographic proximity. Despite this fact, the Board notes the following factors favoring approval of a department-wide bargaining unit in this case:

- 1) The employees' common relationship to the administrative organization of the Department of Corrections and Human Resources.
- 2) The employees' similarity in being governed by merit system rules regarding work conditions, rules, sick leave and vacation policy.
- 3) The fact that, historically, many of the employees in the proposed unit have been represented by AFSCME in a department-wide bargaining unit.
- 4) The avoidance of undue fragmentation, which would impose a burden on the respondent by requiring it to deal with many different bargaining units in the absence of evidence showing that a department-wide unit would have an adverse impact on the rights of the employees in this case.

The Board of Mediation finds, based on the above considerations, that a bargaining unit consisting of the employees previously certified as a unit in Public Case No. 82-016, as enlarged by the additional job classifications stipulated herein does constitute an appropriate bargaining unit.

In so finding, the Board does not intend to announce a policy of routinely allowing department-wide bargaining units in future cases. As noted by Professor Gorman:

"It can easily be seen that community of interest is a vague standard which does not readily lend itself to mechanical application. It is a multi-factor criterion, and it is rare in any given case that all of the factors point conveniently in the direction of the same size unit . . . it is indeed possible that on the basis of community of interest, the Board may conclude that there are

several units any one of which may be, in the language of the statute, 'a unit appropriate' for collective bargaining." Id. at 60-70.

II

SUPERVISORY STATUS OF CORRECTIONS OFFICER II's

The Board finds that Corrections Officer II's share a community of interest with other employees in the bargaining unit certified herein, and are not excluded from said unit by virtue of being supervisory, based on the following findings:

- 1) C.O. II's are compensated at a relatively low pay rate compared to other employees and are paid time and a half for overtime work, which is consistent with their classification as nonsupervisory employees.
- 2) C.O. II's acting as C.O. II's have no authority to direct and assign the work force.
- 3) C.O. II's are second to lowest in the guard force and are subject to supervision by both C.O. III's and captains.
- 4) C. O. II's have no authority to hire, fire, discipline or promote other employees.

Although some evidence was produced to show that some C.O. II's at smaller corrections facilities possess greater discretion in the performance of their duties than C.O. II's at larger institutions, the Board finds this evidence is insufficient to show that these employees possess sufficient supervisory authority as C.O. II's to warrant their exclusion from the bargaining unit.

III

TEACHERS

Section 105.500 RSMo. provides, in pertinent part:

105.510. CERTAIN PUBLIC EMPLOYEES MAY JOIN LABOR ORGANIZATIONS AND BARGAIN COLLECTIVELY--EXCEPTIONS--DISCHARGE OR DISCRIMINATION FOR EXERCISE OF RIGHT PROHIBITED--ALLOWABLE ORGANIZATIONS FOR EXCEPTED EMPLOYEES. Employees, except police, deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, all teachers of Missouri schools, colleges and universities, of any public body shall have the right

to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing . . . (Emphasis added).

The Board has previously ruled in Communications Workers of America, AFL-CIO v. Department of Social Services, Public Case No. 83-012 (SBM 1984) that instructors who are not employed by any school district, college or university are not teachers within the meaning of Section 105.510 RSMo. The Board therefore finds that teachers in this case, who are employed by correctional institutions, are appropriate for inclusion in the department-wide bargaining unit.

DECISION

It is the decision of the State Board of Mediation that those employees of the Department of Corrections and Human Resources in the classifications listed on Schedule A including C.O. II's and Teachers attached hereto, share a community of interest with other classifications of employees previously certified by the Board in Public Case No. 82-016. Excluded are employees represented by other labor organizations and employee classifications listed on Schedule B consisting of supervisory, confidential, managerial, or professional employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the job classifications approved by this decision to be added to the unit previously certified in Public Case No. 82-016. The election shall be held as soon as possible, but not later than sixty (60) days from the date of this decision.

The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those employed in job classifications approved by this decision to be added to the previously

certified unit who were employed during the payroll period immediately preceding the date of this decision, including employees who did not work during that period because of vacation or illness. Ineligible to vote are those employees in job classifications previously certified in Public Case No. 82-016; those employees who quit or were discharged for cause since the designated payroll period; and who have not been rehired or reinstated before the election date; and employees represented by other labor organizations. Those eligible to vote shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by the Petitioner, American Federation of State, County, and Municipal Employees, Council 72.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within fourteen (14) working days from the date of receipt of this decision, an alphabetical list of the employees names and addresses to be added to the unit designated in Public Case No. 82-016, who were employed during the designated payroll period.*

Signed this 2nd day of August, 1984.

(S E A L)

STATE BOARD OF MEDIATION

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ Jim O'Mara
Jim O'Mara, Employee Member

/s/ Norman Litz
Norman Litz, Employer Member

*It is also ordered that the Petitioner submit to the Chairman any additional authorization cards that they may have within three (3) days from receipt of the decision.

SCHEDULE A

CLASSES TO BE ACCRETED OR ADDED TO THE BARGAINING UNIT

Academic Teacher I	Laundry Manager I
Academic Teacher II	Laundry Supervisor
Academic Teacher III	Librarian
Accountant I	Library Assistant
Assistant Director of Industries	Machine Shop Foreman
Baker II	Maintenance Man II
Barber II	Meat Cutter II
Bookkeeping Machine Operator	Meat Processing Supervisor (Corrections)
Building Engineer, Corrections	Medical Records Technologist I
Central Transfer Authorities Mgr.	Medical Technologist II
Chemist I	Medical Technologist III
Chemist II	Outdoor Rehabilitation Counselor I
Clinical Psychologist I	Planner I
Clinical Psychologist II	Plumber
Cook I	Procurement Officer I
Correctional Industries Analyst	Production Specialist I
Correctional Industries Representative	Production Specialist II
Corrections Caseworker I	Programmer I
Corrections Caseworker II	Psychological Technician
Corrections Officer II	Recreation Officer II
Dental Assistant	Refrigeration Mechanic II
Drug Abuse Counselor III	School Librarian
Education Assistant II	Sewing Equipment Mechanic
Farm Supervisor	Special Education Teacher I
Fire and Safety Supervisor	Special Education Teacher II
Garage Supervisor	Special Education Teacher III
Graduate Nurse II(except one each at Algoa)	Stationary Engineer
Graduate Nurse III Correctional Center and Guidance Counselor, General Central Missouri Correctional Center)	
Industries Job Coordinator	Stores Clerk
Industries Services Mgr. I	Systems Analyst III
Industries Supervisor I	Vocational Teacher I
Industries Supervisor II	Vocational Teacher II
Industries Trainee	Vocational Teacher III
Institutional Community of Activity Coordinator	
Laborer II	

SCHEDULE B

CLASSES TO BE EXCLUDED FROM THE BARGAINING UNIT AS EITHER SUPERVISORY, CONFIDENTIAL, MANAGERIAL, OR PROFESSIONAL

Accountant II	Health Care Coordinator Corrections
Accountant III	Health Care Officer Corrections
Assistant Corr. Diag. Ctr.	Human Relations Officer I
Director	
Assistant Director Correc.	Industry Service Manager II
Budget Analyst II	Inmate Finance Officer
Chief Accountant	Internal Affairs Officer Correc.
Chief Engineer	Maint. Supervisor II
Chief of Fiscal Mgmt. (Corr.)	Mgmt. Analysis Specialist I
Chief of Staff Training	Mgmt. Analysis Specialist II
Clinical Psychologist III	Outdoor Rehabilitation Counselor II
Clinical Psychologist IV	Personnel Analyst I
Construction Coord., Corr.	Personnel Analyst II
Cook III	Personnel Clerk
Coord. of Volunteer Services	Personnel Officer I
Corrections Caseworker II	Personnel Officer II
(at Missouri Eastern	Personnel Officer III
Correctional Center, State	Pharmacist I
Correctional Pre-Release	Physician I
Center, Kansas City Honor	Physician II
Center, St. Mary's Honor	Physician III
Center and Chillicothe	
Correctional Center)	
Corrections Casework Supv.	Plant Maintenance Engineer I
Corr. Diag. Ctr. Director	Plant Maintenance Engineer II
Corr. Industries Coord. I	Prison Industries Dis. Supv.
Corr. Industries Coord. II	Procurement Officer II
Corrections Officer III	Public Information Specialist III
Corrections Superintendent I	Recreation Officer III
Corrections Super. II	Records Officer I, Corrections
Corrections Super. III	Records Officer II, Corrections
Corrections Supervisor I	Stationary Engineer (at Algoa Correction
	Supervisor II Correctional Center and
	Central Missouri Correctional Center)
Dentist I	
Dentist II	
Dentist III	Storekeeper III
Director of Education	Supervisor of Library Services
Director, Prison Industries Corrections	
Education Coordinator	Training Officer Corrections
Education Supervisor I	Functional Unit Manager (Corr.)
Education Supervisor II	
Executive I	
Executive II	

Factory Manager I
Factory Manager II
Farm Manager I
Farm Manager II
Farms Director, Corrections
Food Service Coordinator
Food Service Manager I
Food Service Manager II
Graduate Nurse IV
Graduate Nurse V